

Decision 05-02-010 February 10, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 M), a California Corporation, and the City of Redding, a Municipal Corporation of the State of California, for an Order Authorizing the Sale and Conveyance of a Certain Parcel of Land in Shasta County Pursuant to Public Utilities Code Section 851.

Application 04-09-022
(Filed September 23, 2004)

O P I N I O N

1. Summary

Pursuant to Pub. Util. Code § 851, we approve the sale and conveyance by Pacific Gas and Electric Company (PG&E) of a certain parcel of land located in Shasta County to the City of Redding (Buyer). We also approve an agreement between PG&E and the Commission's Office of Ratepayer Advocates (ORA) to refer the issue of proceeds of this sale to our gain-on-sale proceeding, Rulemaking (R.) 04-09-003.

2. Background

PG&E on September 23, 2004, filed this application for authority to sell and convey 30.18 acres of land in Shasta County to Buyer for a purchase price of \$249,000. Buyer will be preserving the land in its natural condition and will use the property to satisfy wetland mitigation obligations that it has incurred as part of environmental review of several construction projects. While Buyer will retain

ownership, the wetlands portion will be subject to a conservation easement and will be managed by the California Department of Fish and Game.

PG&E acquired the property in 1936 to use as a corridor for electric transmission lines. In this transaction, the company would be given easements for establishment of electric lines as necessary. PG&E states that by exchanging unused ownership interests for easements and by removing the book value of the fee interests from rate base, it would be able to maintain customer service at a reduced cost.

PG&E states that reserving easements will be more advantageous to the company and its ratepayers than continuing to own the property. With easements, the company retains all rights necessary for maintenance and operation of distribution facilities while avoiding payment of property taxes and the cost of maintaining the property.

3. Withdrawal of Protest

ORA filed a protest of the application on October 28, 2004, objecting to PG&E's plan to book any gain on sale from the transaction for the benefit of shareholders. ORA urged instead that the issue of gain on sale be referred to R.04-09-003, our open rulemaking proceeding addressing gain-on-sale issues.

PG&E replied to the protest, arguing that gain on sale of land traditionally has gone to shareholders, but agreeing with ORA that the issue should be referred to the gain-on-sale rulemaking.

The parties on December 17, 2004, filed a joint motion in which ORA withdrew its protest on the condition that the gain-on-sale issue is referred to R.04-09-003. The parties also agreed to joint stipulated facts to assist the Commission in applying any future decision in R.04-09-003 to this sale. The following facts are uncontested:

1. The property consists of approximately 30.18 acres of unimproved real property located in Shasta County.
2. The property was purchased in 1936 for \$325.
3. The property has been in ratebase since 1936 and will be removed from ratebase upon its sale.
4. The estimated 2004 revenue requirement for the property, including taxes, franchise requirements, and provisions for uncollectible accounts is \$5,296.
5. The annual property tax for the property in 2003-2004 was \$5,083.
6. The property's annual operation and maintenance cost is \$118.
7. PG&E forecasts its 2004 authorized cost of capital for distribution will be 12.33% on equity and 9.44% on ratebase.
8. The pre-tax gain on sale is estimated to be \$248,557, and the after-tax gain on sale is estimated to be \$147,280.

4. Discussion

No public utility may transfer its property that is necessary or useful in the performance of its duties to the public without first having secured the Commission's authorization. (Pub. Util. Code § 851.) The land at issue here is not necessary for utility service so long as PG&E has easements for installation of electric transmission lines as necessary.

The purchase price for the land is \$249,000. PG&E estimates that the sale will result in an after-tax gain of \$147,280, which PG&E believes should accrue to shareholders in conformance with past decisions of this Commission stemming from its "Redding II" decision in 1989. (*Re Rate-Making Treatment of Capital Gains Derived From the Sale of a Public Utility System Serving an Area Annexed by a Municipality or Public Entity* (1989) 32 CPUC2d 233, 234.) Nevertheless, PG&E

agrees with ORA that the gain-on-sale issue should be referred to R.04-09-003 for resolution.

Under the California Environmental Quality Act (CEQA), we must consider the environmental consequences of projects, as defined, that are subject to our discretionary approval. (Pub. Resources Code § 21080 and § 21065.)

Under the CEQA Guidelines (Cal. Code Regs, tit. 14, § 15000, et seq.), where a project is to be approved by more than one public agency, one agency becomes the “Lead Agency” responsible for environmental review, and all other agencies with discretionary approval over the project are “Responsible Agencies.”

(Guidelines, § 15050, Pub. Resources Code § 21165.)

Here, the City of Redding is the Lead Agency for this project under CEQA and the Commission is a Responsible Agency. CEQA requires that the Commission consider the Lead Agency’s environmental documents and findings before acting upon or approving a project. (CEQA Guidelines Sections 15050(b) and 15096.) The specific activities that must be carried out by a Responsible Agency are contained in the CEQA Guidelines Section 15096.

PG&E states that the environmental review for the project has already been conducted by the City of Redding as Lead Agency under CEQA and that the Commission’s role should be that of a Responsible Agency under CEQA. In support of its position, PG&E submitted with its application a copy of the Notice of Exemption issued by the City on June 3, 2004, approving the acquisition of 30 acres of PG&E property on Old Highway 44 for wildlife conservation. Since the purpose of the acquisition is to preserve the land in its natural condition, the notice states that the project qualifies for a categorical exemption under Section 15313 of the CEQA Guidelines, which covers the acquisition of land for fish and

wildlife conservation purposes where the land is to be preserved in its natural condition.

As a Responsible Agency under CEQA, we have reviewed the environmental information submitted with this application and find it adequate for our decision-making purposes. Based on the representations of the parties, we agree with the City of Redding's determination that since the purpose of the acquisition is to preserve the land in its natural condition, the project qualifies for a categorical exemption under Section 15313 of the CEQA Guidelines.

5. Categorization and Need for Hearings

In Resolution ALJ 176-3140, dated October 7, 2004, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. With the withdrawal of ORA's protest, public hearing is not necessary. The preliminary determinations made in Resolution ALJ 176-3140 are affirmed.

6. Uncontested Decision Grants Relief Requested

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

7. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E is an electric utility subject to the jurisdiction of this Commission.
2. Notice of the filing of the application appeared in the Daily Calendar on September 28, 2004.

3. ORA protested the application, but it subsequently withdrew its protest on the condition that gain-on-sale issues are referred to a pending proceeding,

R.04-09-003.

4. Buyer is a municipal corporation that seeks to buy 30.18 acres of PG&E-owned land located in Shasta County.

5. PG&E has agreed to sell the land to Buyer.

6. The purchase and sale agreement provides that PG&E will retain easements on the property for the installation of transmission facilities as necessary.

7. The City of Redding is the Lead Agency for the project under CEQA.

8. The Commission is a Responsible Agency for the project under CEQA.

9. The City of Redding issued a Notice of Exemption approving the acquisition of the property and concluding that, since the purpose of the acquisition is to preserve the land in its natural condition, the project qualifies for a categorical exemption under Section 15313 of the CEQA Guidelines.

10. The sale and conveyance of the property will not adversely affect existing ratepayers.

Conclusions of Law

1. A public hearing is not necessary.

2. The sale and conveyance of the property system is subject to Pub. Util. Code § 851.

3. The Commission has considered City of Redding's environmental review documents and we find these documents adequate for our decision-making purposes.

4. We adopt the City of Redding's environmental finding that the project qualifies for an exemption under Section 15313 of the CEQA Guidelines.

5. The sale and conveyance of the property should be approved.
6. PG&E should be authorized to enter into the purchase and sale agreement attached to the application.
7. PG&E should be directed to book gain on sale of this transaction in accordance with the final decision approved by the Commission in R.04-09-003.
8. The order should be effective today to allow the proposed sale to be executed on an expeditious basis.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) may sell and convey to the City of Redding (Buyer) a certain parcel of land located in Shasta County, as more fully set forth in the application and its exhibits and subject to the terms and conditions described therein.
2. PG&E shall book gain on sale from the transaction in a temporary account, pending a final decision by this Commission in Rulemaking (R.) 04-09-003, at which time such gain on sale shall be booked in accordance with that final decision.

3. The authority granted herein shall expire if not exercised within one year of the date of this order.

4. Application 04-09-022 is closed.

This order is effective today.

Dated February 10, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Comr. Grueneich recused herself from this agenda item and was not part of the quorum in its consideration.